IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8058 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

POPATBHAI DEVJIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8058 of 2004

MS KD PARMAR for Petitioner

MR SHAMJI A CHAVDA for Petitioner

MRS HB PUNANI, AGP for Respondent No.3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 02/11/2004

ORAL JUDGEMENT

1. The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the

PASA Act") by the order dated 25.04.2004 passed by the Commissioner of Police, Rajkot and the detenu is ordered to be detained in Surat Jail exercise of conferred under Sub-Section (2) of Section 3 of the PASA Act, mainly on the basis of one prohibition case, which has been registered at Rajkot Taluka Police Station, Rajkot City being C.R.No.26 of 2004, on 15.04.2004 and also on the basis of two statements of the independent persons, which has been recorded on 22.04.2004 and the same has been verified by the detaining authority on 23.04.2004 and the detention order has been passed on 25.04.2004. The petitioner was actually detained on 27.04.2004.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act.

3. Heard learned advocate for the petitioner and learned APP for the State. Also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation to the authority through his advocate on 28.05.2004, which has been received by the authority on 29.05.2004, but the same has not been considered and communicated to the petitioner, informing that either the representation of the detenu is decided or rejected for which though detaining authority has filed an affidavit on 25.09.2004, same was not controverted. However no affidavit has been filed by the State.

4. It has been held by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

6. It appears that no affidavit has been filed by the State authority and also since no explanation has been putforth by the detaining authority in the affidavit for not communicating the decision of rejection of his

representation, the order of detention is illegal and the same cannot be sustained.

7. In the result, the petition is allowed. The impugned order of detention dated 25.04.2004 passed against the detenu Popatbhai Devjibhai Koli is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

(vijay)